

Calendar No. 174

82D CONGRESS }
1st Session }

SENATE

{ REPORT
{ No. 182

ALVIN SMITH

MARCH 19 (legislative day, MARCH 16), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 599]

The Committee on the Judiciary, to which was referred the bill (H. R. 599) conferring jurisdiction upon the United States District Court for the District of Delaware to hear, determine, and render judgment upon the claim of Alvin Smith, of New Castle, Del., arising out of the damage sustained by him as a result of the construction and maintenance of the New Castle United States Army Air Base, New Castle, Del., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is that jurisdiction be conferred upon the United States District Court for the District of Delaware under section 1346, title 28, United States Code, upon the claim of Alvin Smith, of New Castle, Del., for damages arising out of property damages sustained by him as the direct result of the construction and maintenance of the New Castle United States Army Air Base, New Castle, Del.

STATEMENT

A similar bill was favorably reported and passed Congress during the Eighty-first Congress but was vetoed by the President. According to the House report on H. R. 599, the House Committee on the Judiciary has information that the objections of the President to the previous bill have been removed from the bill as now presented.

The report of the Department of the Army relative to a similar bill states as follows:

The evidence in this case fairly establishes that Mr. Smith has sustained some damage as a result of the construction and maintenance of the New Castle Army Air Base. In view, however, of the great difficulty, if not the impossibility, of determining satisfactorily from the evidence now before the Army the extent of such damage, it is recommended that jurisdiction be conferred on the United States District Court for the District of Delaware to hear, determine, and render judgment on Mr. Smith's claim.

After mature consideration of the facts as set forth in the Department of the Army report, which is hereto attached, the committee recommends favorable consideration of H. R. 599.

DEPARTMENT OF THE ARMY,
Washington, April 27, 1950.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army would have no objection to the enactment of H. R. 1022, Eighty-first Congress, a bill for the relief of Alvin Smith, if it should be amended as hereinafter recommended.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Alvin Smith, New Castle, Del., the sum of \$26,655. The payment of such sum shall be in full settlement of all claims against the United States arising out of the damages sustained by the said Alvin Smith as the direct result of the construction and maintenance of the New Castle United States Army Air Base, New Castle, Del."

A similar bill, H. R. 5234, for the relief of Alvin Smith, was introduced in the Eightieth Congress and referred to your committee. You requested the Department of the Army to submit a report on that bill, including an opinion as to the merits of the proposed legislation. On January 10, 1948, the Department of the Army, upon the evidence then of record, submitted to your committee a full report of the facts regarding the damages allegedly sustained by Mr. Smith on account of the construction and maintenance of the New Castle Army Air Base and advised that, in its opinion, the claimant had not suffered any damage as a result of the construction work at said base.

The claimant contends that the New Castle Army Air Base, which was built in 1942, was so constructed as to change the grade of the land and thereby materially increase the normal flow of surface water draining into Armstrong Creek; that said increased flow carries with it a large amount of sand and gravel which has filled said creek and thus deprived him of the normal flow of fresh water needed in the operation of his fish ponds; that this condition still exists; and that by reason thereof he has been extensively damaged.

In April 1949 Mr. Smith filed a suit against the United States in the United States District Court for the District of Delaware (*Alvin Smith v. United States*, Civil Action No. 1212), under the provisions of the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), in which he prayed for a judgment in the amount of \$25,430 for the damages allegedly sustained by him as the result of the construction and maintenance of the New Castle Army Air Base. The United States filed a motion to dismiss said suit on the ground that the court was without jurisdiction to hear and determine the case. On March 13, 1950, the court rendered the following opinion sustaining the motion to dismiss:

"The defendant in the case at bar has filed a motion to dismiss. The matter has been fully argued and counsel have filed their respective briefs.

"After considering the cause of action set forth in the complaint and the time of the occurrences of the claimed damage, I have determined to grant the defendant's motion to dismiss the complaint, but this is without prejudice to plaintiff to seek redress before other divisions of the United States Government. An ordered will be entered."

Thereafter and on the same date the court entered an order dismissing the plaintiff's suit "without prejudice to plaintiff to seek his remedy before other divisions of the United States Government."

In your letter requesting a report on H. R. 1022, Eighty-first Congress, you stated that "The committee has information that new evidence has been submitted, therefore please render a new report."

Since the Department of the Army submitted its report to your committee on H. R. 5234, Eightieth Congress, and subsequent to the institution of the above-mentioned suit in court, Mr. Smith filed with the Department certain additional evidence in support of his claim. On October 28, 1949, Mr. Smith filed with the Department his undated affidavit, to which was attached an estimate of the cost of moving two buildings, now located adjacent to his fish ponds, to another place. On February 10, 1950, he filed with the Department his affidavit, dated February 10, 1950, to which were attached eight exhibits, and the affidavit of Harold E. Tiffany, dated February 10, 1950. Copies of all the aforesaid papers are attached hereto.

The evidence in this case fairly establishes that Mr. Smith has sustained some damage as a result of the construction and maintenance of the New Castle Army Air Base. In view, however, of the great difficulty, if not the impossibility, of determining satisfactorily from the evidence now before the Department of the Army the extent of such damage, it is recommended that jurisdiction be conferred on the United States District Court for the District of Delaware to hear, determine, and render judgment on Mr. Smith's claim.

The Department, therefore, would have no objection to the enactment of this bill if the title and text thereof should be amended to read as follows:

"A BILL conferring jurisdiction upon the United States District Court for the District of Delaware to hear, determine, and render judgment upon the claim of Alvin Smith, of New Castle, Delaware, arising out of the damage sustained by him as a result of the construction and maintenance of the New Castle United States Army Air Base, New Castle, Delaware.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction conferred upon the United States District Court for the District of Delaware by subsection (b) of section 1346, title 28, United States Code, is hereby extended to a civil action, which may be commenced not later than one year after the enactment of this Act, asserting any claim or claims of Alvin Smith, of New Castle, Delaware, against the United States for money damages arising out of property damage sustained by him as a result of the construction and maintenance of the New Castle United States Army Air Base, New Castle, Delaware. Except as otherwise provided in this Act, all provisions of law applicable in and to such subsection, and applicable to judgments therein and appeals therefrom, are hereby made equally applicable in respect of the civil action authorized by this Act: Provided, however, That nothing in this Act does or shall constitute an admission of liability on the part of the Government of the United States of America."

It has been determined by the dismissal of Mr. Smith's suit that he has no remedy under the Federal Tort Claims Act, as revised, codified, and amended, for the reason that his claim accrued prior to January 1, 1945.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

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